

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

jh/CSG

**Mailed: May 27, 2006**

**Opposition No. 91167219**

**CYI, Inc.**

**v.**

**Alhert, Gary**

Cheryl S. Goodman, Interlocutory Attorney:

On November 15, 2005 applicant filed what was intended to be an answer to the notice of opposition.<sup>1</sup> Although some paragraphs of the answer can be read as denials, other paragraphs are argumentative and do not comply with Rule 8(b) of the Federal Rules of Civil Procedure, made applicable this proceeding by Trademark Rule 2.116(a).

Fed. R. Civ. P. 8(b) provides, in part:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a

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<sup>1</sup> Applicant's communication does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119 (which is more fully explained later in this order). In order to expedite this matter, a copy of said communication is forwarded herewith to counsel for opposer, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

qualification of an averment, the  
pleader shall specify so much of it as  
is true and material and shall deny only  
the remainder. (emphasis added)

The notice of opposition filed by opposer herein consists of 10 paragraphs setting forth the basis of opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on applicant to answer the notice of opposition by admitting or denying the allegations contained in each paragraph. If applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

In view of the foregoing, applicant is allowed until **THIRTY DAYS** from the mailing date of this order in which to file an answer herein which complies with Fed. R. Civ. P. 8.

As noted earlier in this order, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding, including its answer to the notice of opposition, must be accompanied by a signed statement

indicating the date and manner in which such service was made.<sup>2</sup>  
The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.

It should also be noted that while Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney, who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

It is recommended that applicant obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice and is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.<sup>3</sup>

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is

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<sup>2</sup>The suggested format for a certificate of service is as follows:  
I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and address of opposing counsel or party).

<sup>3</sup> The Trademark Trial and Appeal Board Manual of Procedure (TBMP) (Stock No. 903-022-00000-1) is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. (Telephone (202) 512-1800). The TBMP is also available on the World Wide Web at <http://www.uspto.gov>.

expected of all parties before the Board, whether or not they are represented by counsel.

It is noted that applicant advised that the parties are currently involved in civil litigation in the Southern District of New York (04-CV-04696). The parties should provide a copy of the civil complaint to the Board so that the Board can determine if the civil action will have a bearing on the proceeding.

Discovery and trial dates remain as set in the institution order.